

GOTTA PROBLEM?

STEPS YOU CAN TAKE TO RESOLVE SITE CLEANUP DISPUTES WITH ECOLOGY

SO, YOU'VE GOT AN UNRESOLVED DISPUTE-- WHAT CAN YOU DO?

If you are involved in a Model Toxics Control Act (MTCA) cleanup, chances are you have at least had some disagreements with Ecology in the process of considering cleanup decisions -- Potentially Liable Persons (PLPs) and other folks sometimes have different ideas about how to get sites cleaned. The following outline suggests steps you can take to promote effective prevention, management and resolution of disputes as you work with Ecology to clean up your site. This process will help you work with Ecology to resolve disagreements, helping you complete a better cleanup with less delays.

WHEN DO YOU USE THIS PROCESS?

It is important to clean up sites, but it can also be costly. For these reasons, PLPs want to move through the cleanup process quickly while making sound, yet cost effective decisions. Often, there are many different ideas about the best way to cleanup a site. Unresolved conflicts and the resulting delays, may occur because of these differences.

Ecology has outlined a process for PLPs and others that can be used when a dispute occurs between Ecology and PLP regarding site cleanup. If you are dissatisfied with the proposed resolution of an issue in dispute, use this process. Conflicting parties are encouraged to use informal efforts with the Ecology staff who are immediately involved in the site cleanup to resolve problems before elevating them within Ecology. First seek to resolve the most important issues.

COME TALK TO ECOLOGY!

The dispute resolution process for PLPs working with Ecology is outlined in a stepwise manner. We expect disagreements to occur as we work to accomplish site cleanups. We want to work with you to resolve them as early and quickly as possible. The process below is meant to facilitate quick and effective resolution of disagreements.

STEP 1 You, the PLP (or representative) and Ecology's Site Manager

Don't Wait! When you have a disagreement with Ecology, the first step you can take is to talk with the site manager about the issue. Ask for a meeting or talk over the phone to identify the problem and reasons why you think that the problem exists. Ecology site managers may also

call a meeting with you if they believe a disagreement is emerging. In-person meetings are often more successful than an exchange of letters or phone calls so, if at all possible, arrange a meeting to discuss difficult issues.

Here are some ideas for you to consider as you prepare for your meeting with Ecology:

- Call your Ecology site manager! Do not wait for the next submittal deadline or the next progress report to raise the issue -- work to resolve conflicts as they emerge.
- Revisit and reaffirm the ground rules of the negotiation, the conceptual site model or other commitments.
- Be prepared to clearly express or clarify short-term and long-term expectations regarding the cleanup at the site.
- Discuss the nature of the disagreement (policy, temporal, technical, internal, political, etc.) to identify the interests of the parties.
- Know what dispute resolution options exist and the next steps for unresolved disagreements. Review the dispute resolution guidelines stated in the document if you are working under a consent decree or agreed order

In the meantime, Ecology will also follow this process.

STEP 2 PLP (or representative), Ecology Site Manager and Supervisor

If discussions between you and Ecology's site manager to resolve disagreements are not successful, you or Ecology staff may wish to involve the next level of management. At Ecology this is the unit supervisor or the section manager. After following the process outlined in Step 1 you may ask the Ecology site manager to invite his/her supervisor into the process. At this point, each party may present a short briefing regarding issues. Continue working to clarify the nature of the dispute. Ecology may consider inviting an Ecology peer review team to attend the briefing.

STEP 3 PLP (or representative), Site Manager, Section Manager

Hopefully, by this point, you and Ecology have come to an agreement that suits each of you. If not, you may request that the Ecology section manager become involved in the discussions. It is the Ecology section manager's responsibility to determine the nature of the dispute and recommend appropriate action.

STEP 4 Policy Disputes

When the disagreement involves non-technical policy, Ecology's section manager will determine if Ecology's position is consistent with published agency and program policy. This type of issue may include formal or informal policy.

If a non-technical policy dispute remains after the section manager involvement, the disagreement will be elevated to the program manager for resolution. Either the PLP or Ecology may request the issue be elevated to the TCP Program Manager. The TCP Program Manager will work with the Ecology staff to determine if the referral is coming at an appropriate step in the dispute resolution process.

STEP 5 Technical Disputes

For technical disputes, the section manager will consider the basis for, and degree of, disagreement -- and determine how similar disagreements have been resolved at other sites. For serious disputes, participants may want to move directly to peer review. Each disputant should present information or anecdotes that explain their position.

Negotiation Peer Review: For unresolved technical disputes, the site manager will invite the Section Manager and perhaps other staff to join in reviewing the issue.

- Peer review includes at least one Ecology staff person with appropriate expertise and experience in technical and policy areas.
- The Assistant Attorney General for the site may participate in the review.
- Site managers from both sides of the dispute will provide Ecology management a one-page summary of the issue and the nature of the dispute. If necessary, the parties may make an oral presentation of the issue.
- Ecology will provide a written opinion regarding the issue.

Neutral Third Party: If you continue to disagree with the technical basis for an Ecology position, you and Ecology may agree to select a neutral third party to provide an opinion.

- Either party may request such a review, but both parties must agree on the selection of the neutral party.
- Ecology will facilitate discussions and resolution regarding who will pay for the neutral party.
- Ecology will consider the recommendation provided by the neutral party as it considers a decision.

STEP 6 Unresolved Disputes:

Finally, Ecology's Toxics Cleanup Program Manager will make the final decision for disputes not resolved by the above steps.

We hope that you will call us when you have questions or concerns regarding your site or the way decision making is occurring. And we'll call you when we've got concerns. Your Ecology site manager can be of great assistance in helping to resolve disagreements or in clarifying the process. Please, don't hesitate to call!